

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4051 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

ASHOK BALUBHAI CHUNARA (VAGHARI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
Mr.Nigam Shukla, learned Addl. P.P. for the
respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/10/96

ORAL JUDGMENT ;

1. Petitioner-detenu herein seeks to challenge the detention order dated 15-4-96 passed against him by the Police Commissioner, Ahmedabad City detaining him under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 15-4-96 itself and since then the petitioner is under detention

at Bhavnagar Jail, Bhavnagar.

2. The petitioner's wife had made a representation to the Home Minister on 17-5-96 and as stated in para 14 of the petition the petitioner does not know whether it was considered or not and even if considered it was considered after great delay. The present petition challenging the detention order on various grounds was filed on 14-6-96 and on 17-6-96 Rule returnable for 9-7-96 was issued by this court, but so far no reply has been filed on behalf of the respondents and no affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention, which were enclosed with the detention order, show the pendency of 6 cases in all against the petitioner during the years 1994, 1995 and 1996 under the Bombay Prohibition Act with regard to the unauthorised country liquor ranging between 5 to 20 liters. Out of these six cases, first four cases were pending before the Court and the rest of the two cases were pending police investigation at the time when the detention order was passed. The detaining authority, after noticing aforesaid 6 criminal cases, has referred to the statements of 4 witnesses, he formed the opinion for petitioner's detention on the ground that the petitioner was engaged in the unauthorised business of the sale of the country liquor. Reference has also been made to the unfortunate lattha kand which had happened in past in which the petitioner was not involved. The detaining authority has referred to the lattha kand only to show the consequences of the consumption of the country liquor and has recorded that the petitioner was a bootlegger and was engaged in anti social activities. He has also referred to the 2 incidents dated 12-3-96 and 16-3-96 in which the witnesses have stated that while the witness was present at the place of business the petitioner went with stock of country liquor and wanted it to be stored with the witness, the witness refused and there upon the petitioner got enraged, dragged the witness to the Maningar crossing and publicly beaten him, the witness raised an alarm, there was a crowd, the petitioner ran after the members of the crowd with knife, there was a helter skelter, an atmosphere of terror was created and shop keepers had to shut their shops. With regard to the incident dated 16-3-96 it has been mentioned that while the witness was passing near the Jawahar Chowk Char Rasta, the petitioner and his associates intercepted the witness and branding him to be a police informer gave him a public beating, the witness cried for help, the crowd was collected, the petitioner

brought out a sharp edged weapon (Chhari) and ran after the members of the crowd resulting into helter skelter of the people and thus the atmosphere of terror was created and the routine life of the people was disturbed. The witnesses had expressed their fear from the petitioner and for reasons of the security of their person and property they requested that their identity be kept secret. While referring to the statements of the witnesses, the detaining authority has mentioned that the petitioner was a head strong person and was engaged in the anti social activities of unauthorised sale of liquor, was publicly beating innocent people and on account of his fear, the witnesses had requested that their identity may not be disclosed. Detaining authority has invoked S.9(2) of the Act for the purpose of withholding the identity of the witnesses and has found that the proceedings of externment are not adequate and safe and petitioner's detention was warranted. Accordingly the detention order was passed.

4. At the time of arguments, the learned counsel for the petitioner has stressed the ground that it was not a case of breach of public order and the allegations as contained in the grounds for detention, even if taken to be true on their face value, at the most make out a case of breach of law and order and it is not a case of breach of public order for which the detention could be said to be warranted.

5. I have considered the submissions made on behalf of both the sides. Only yesterday i.e. on 4-10-96 I have passed an elaborate order with detailed reasons and after taking into consideration the ratio of the various decisions rendered by the Supreme Court and this Court a view has been taken that the allegations of this nature do not constitute a case of breach of public order. For the reasons stated in the detailed order dated 4-10-96 passed in Special Civil Application No.3879/96, which is based on number of decisions rendered on the point and comparing the nature of allegations which were considered by the Supreme Court and this Court and comparing the same with the allegations in the present case, I am fully satisfied that such allegations do not constitute a case of breach of public order nor they could be made the ground for passing the impugned detention order. Such grounds have been held to be not at all germane to the considerations required for breach of public order and I find that the detention order has been passed for a collateral purpose of law and order instead of public order and the detention order passed on the grounds, as aforesaid, can not be sustained in the eye of law. The

submission made on behalf of the petitioner is fully covered by the decision rendered on 4-10-96 by this Court, as stated above and the impugned detention order deserves to be quashed and set aside.

6. Accordingly this Special Civil Application is allowed. The petitioner's continued detention is declared to be illegal and the detention order dated 15-4-96 passed by Police Commissioner, Ahmedabad City is hereby quashed and set aside. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.